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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing the EU Anti-Fraud Programme**

{SWD(2018) 294 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

In the context of the preparation of the next Multiannual Financial Framework (MFF), a programme should be established to support the protection of the EU financial interests as well mutual administrative assistance between customs authorities.

An ex-ante evaluation was performed in connection with the new programme, in line with Article 30(4) of the 2016 Financial Regulation, in the form of a Staff Working Document.

This proposal provides for a date of application as of 1 January 2021 and is presented for a Union of 27 Member States, in line with the notification by the United Kingdom of its intention to withdraw from the EU and Euratom based on Article 50 of the Treaty on European Union received by the European Council on 29 March 2017.

- **Reasons and objectives**

Article 325 of the Treaty on the Functioning of the European Union (TFEU) provides for a shared obligation of the Member States and the EU to protect the latter's financial interests. Article 33 TFEU provides for strengthening of customs cooperation between Member States and between the latter and the Commission. The implementation of the past Union multi-annual budgets has been accompanied by a set of measures to support the Member States and the Union as a whole in preventing and fighting fraud affecting the Union's financial interests, and supporting mutual administrative assistance and cooperation in customs and agriculture matters. These measures include (i) the Hercule III<sup>1</sup> spending programme which supports activities against fraud, corruption and any other illegal activities affecting the financial interests of the Union, (ii) the Anti-Fraud Information System (AFIS) which is an operational activity consisting essentially in a set of customs IT applications operated under a common information system managed by the Commission, set up to perform the tasks entrusted to the Commission by Regulation 515/97<sup>2</sup>, and (iii) the Irregularity Management System (IMS) which is a secure electronic communications tool which facilitates the Member States' obligation to report detected irregularities, including fraud, and which supports the management and analysis of these. Although it is difficult to quantify their financial impact, they have contributed to bringing back large amounts of money into the EU budget. For example, Hercule funded the development of the Automated Monitoring Tool (AMT), an IT tool that identifies anomalies in trade flows. It was used in several customs operations and was instrumental in identifying large undervaluation fraud schemes in the import of textile and footwear from third countries.

Past experience shows that the Union's financial interests are impacted by both fraud and irregularities. Every year, the Annual Report on the protection of the EU's financial interests<sup>3</sup> demonstrates that the level of such irregularities, including fraud, although fluctuating, requires action on the part of the Union. In addition, the next multiannual financial framework (MFF) will be implemented against the background of significant changes in the legislative and institutional framework for the protection of the Union's financial interests, in particular with the establishment of the European Public Prosecutor's

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<sup>1</sup> Regulation (EU) No 250/2014 of the European Parliament and of the Council of 26 February 2014 establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme) and repealing Decision No 804/2004/EC (OJ L 84, 20.3.2014, p. 6).

<sup>2</sup> Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, as lastly amended by Regulation 2015/1525 (OJ L 82, 22.3.1997, p. 1).

<sup>3</sup> All PIF reports are accessible via the website of the Commission: [https://ec.europa.eu/anti-fraud/about-us/reports/communities-reports\\_en](https://ec.europa.eu/anti-fraud/about-us/reports/communities-reports_en).

Office (EPPO) and the implementation of Directive (EU) 2017/1371 of the European Parliament and the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (the PIF Directive)<sup>4</sup>.

From a budget implementation perspective, IMS is not a financing programme but an operational activity. The Commission is tasked with the IMS activity by sectorial legislation. The IMS system needs to be adequately maintained and developed in order to allow Member States to comply with their reporting obligations and to provide the Commission with the necessary data to analyse the main achievements in detecting and reporting irregularities, including fraud, relating to Union's budget in shared management and pre-accession areas.

Like IMS, AFIS is, from a budget implementation perspective, an operational activity. With, in particular, the increasing sophistication of criminal groups and new challenges coming up in the fight against fraud, including in connection with technological evolutions, the need for mutual administrative assistance between customs authorities and cooperation with the Commission remains strong.

The establishment of the EU Anti-Fraud Programme will largely roll over the Hercule III programme, with some improvements such as the possibility to fund new initiatives (e.g. on data analysis), and combine it with the financing basis for AFIS and IMS. It will also take full advantage of the possibilities created by the new Financial Regulation. The EU Anti-Fraud Programme will ensure the continuity of Union support for activities carried out by the Member States and the Commission in the defence of the Union's financial interests and in support of mutual administrative assistance between Member States and cooperation between the latter and the Commission in customs and agricultural matters.

The EU Anti-Fraud Programme will also strengthen and streamline the existing Union support to the efforts to protect the Union's financial interests and for mutual administrative assistance in customs matters, as well as exploit synergies and create flexibility between various existing actions.

The Programme will have two **general objectives**:

- (1) Protecting the financial interests of the European Union.
- (2) Support to mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.

Deriving directly from the general objectives, **the specific objectives** of the Programme will be threefold:

- (1) Preventing and combating fraud, corruption and any other illegal activities affecting the financial interests of the Union.
- (2) Supporting the reporting of irregularities, including fraud, with regard to the shared management and pre-accession assistance funds of the Union budget.
- (3) Providing tools for information exchange and support for operational activities in the field of mutual administrative assistance in customs and agricultural matters.

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<sup>4</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, (OJ L 198, 28.7.2017, p. 29).

- **Consistency with existing policy provisions**

Several legal acts at Union level address the protection of Union's financial interests, most notably: Regulation 883/2013<sup>5</sup> laying down the rules for the investigations by the European Anti-Fraud Office (OLAF), Regulation 515/97 on Mutual Administrative Assistance in customs and agricultural matters, or more recently, Regulation 1939/2017<sup>6</sup> implementing enhanced cooperation on the establishment of the EPPO and the PIF Directive. Sectorial legislation also includes provisions on the protection of Union's financial interests. The EU Anti-Fraud Programme will provide assistance to the Member States and the relevant Union bodies to help them better protect the Union's financial interests. It should support the above-mentioned policy instruments.

In the area of customs, the AFIS component of the EU Anti-Fraud Programme will continue to cover the activities tasked to the Commission by Regulation 515/97. Finally, the IMS component will cover activities tasked to the Commission by sectorial legislations.

- **Consistency with other Union policies**

A new instrument for Customs Control Equipment will be established under the new multi-annual financial framework to support a well-functioning customs union, including by supporting the purchase of control equipment for customs authorities. The EU Anti-Fraud Programme and the Customs Control Equipment programme will be complementary, as each will focus on different types of support to customs: the EU Anti-Fraud Programme will support, among other, the purchase of equipment, including small customs equipment for customs and non-customs authorities, where it is specifically targeted at the protection of the Union's financial interests, while the new customs equipment programme is meant to rather finance the acquisition of larger customs equipment in order to improve uniformity in the performance of customs controls throughout Member States.

For example, the following types of equipment could fall under the EU Anti-Fraud Programme remit without overlapping with the Customs Control Equipment instrument: digital forensic equipment, surveillance equipment, intelligence equipment, equipment for combatting cigarettes trafficking, such as sniffer dogs. In addition, unlike the instrument for Customs Control Equipment, the EU Anti-Fraud Programme will afford support to non-customs authorities, such as tax authorities, judicial authorities, police inspectorates and border police, ministries, various investigative bodies, anti-corruption bodies etc.

Other Union's policies in areas such as Justice, Customs, and Home Affairs and their relevant programmes will address specific challenges in those fields, which will be adjacent to the protection of the Union's financial interests. No overlaps between these programmes and the EU Anti-Fraud Programme are expected. Avoiding duplication and finding synergies between the EU Anti-Fraud Programme and other relevant programmes in areas such as Justice, Customs, and Home Affairs will be explored in the context of the preparation of the Annual Work Programmes.

## 2. **LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis for the EU Anti-Fraud Programme will combine **Article 325 TFEU**, which outlines the shared obligation of the Member States and the Union to protect the Union's financial interests, and

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<sup>5</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning the investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

<sup>6</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'); (OJ L 283, 31.10.2017, p. 1).

**Article 33 TFEU** on customs cooperation given that Regulation 515/97, which provides for the operational aspects financed by the AFIS component of the EU Anti-Fraud Programme, is based on Article 33 TFEU (in addition to Article 325 TFEU)<sup>7</sup>.

- **Subsidiarity**

Irregularities, including fraud, to the Union budget are by definition a Union-wide phenomenon which is not limited to each Member State. This is particularly obvious where fraud has a cross-border dimension on the expenditure side or, on the revenue side, for instance in cases of undervaluation of imported goods which aims at evading customs duties and thus directly affects the traditional own resources of the Union.

As far as the Hercule component of the EU Anti-Fraud Programme is concerned, the intervention at Union level on the protection of Union financial interests is justified in terms of subsidiarity where it facilitates cooperation between the Union and Member States or between Member States, without impinging on Member States' responsibilities (for example, to design and implement their own specific anti-fraud systems). The support which will be provided under this initiative will strengthen cross-border cooperation.

The Union added value of AFIS comes from its coordination dimension, especially in terms of collection and access to data which could not be achieved at national level, and by facilitating the good performance of the national customs authorities' missions and their mutual assistance, as well as cooperation with the Commission.

The IMS is the only database at the Union level which consolidates reported information about irregularities, including fraud, in the shared management and pre-accession funds, per field of Union action and per Member State. It allows for various types of analysis and helps develop an evidence-based Union anti-fraud policy. The added value of such a Union-wide picture is that it allows for identifying common risks and patterns, defining and implementing common approaches to fighting fraud, in view of the effective and equivalent protection of the Union's financial interests.

Additionally, the activities under the AFIS and IMS components of the EU Anti-Fraud Programme are executed at Union level as provided under the relevant Union legislation, which themselves comply with the principle of proportionality.

- **Proportionality**

The Hercule component of the EU Anti-Fraud Programme provides the Member States with targeted assistance in achieving their obligation to protect the Union's financial interests. It is limited to what is necessary in order to attain the proposed objectives, and is therefore compliant with the principle of proportionality.

The AFIS and IMS components of the Programme merely cover the financial obligations imposed on the Commission by secondary legislation, and do not touch upon the operational aspects of AFIS and IMS. As such, they comply with the principle of proportionality.

- **Choice of the instrument**

The legal basis for the previous Hercule programme (Regulation 250/2014), will expire at the end of 2020. Therefore, the establishment of the EU Anti-Fraud Programme under a new regulation will be necessary to ensure the continuity of Union support for the activities carried out by the Commission

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<sup>7</sup> AFIS does cover activities which do not all fall under article 325 TFEU (e.g. customs cooperation in connection with illicit products).

and the Member States with the purpose of providing assistance in the fight against fraud. The adoption of the EU Anti-Fraud Programme offers an opportunity to combine the Hercule component with the financing basis of AFIS and IMS, for streamlining purposes and for exploring operational, administrative and budgetary synergies.

### **3. RESULTS OF RETROSPECTIVE EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

#### **• Retrospective evaluations/fitness checks of existing legislation**

Hercule has been evaluated twice in the past years. The Commission *ex post* report on the evaluation of Hercule II programme (2007-2013) was adopted and transmitted to the European Parliament and to the Council in May 2015<sup>8</sup>. The Commission mid-term evaluation report of Hercule III (starting on 1 January 2014 until June 2017, the first half of the seven-year period that the programme lasts for) was adopted and transmitted in early January 2018<sup>9</sup>. This evaluation found that the Hercule III programme has largely fulfilled its mission to protect the financial interests of the Union. The Programme was thus deemed as effective. It has proven relevant with a possible extension of its operational objectives to be considered, while the necessary mechanisms to ensure its coherence were in place. The Programme was also demonstrated to be overall efficient. Room for improvement was suggested during the evaluation in order to alleviate the burden generated by the application and reporting processes. To this end, the Commission started using an electronic management system for the submission, processing and management of grant applications under the programme. There is a clear added-value to have such a programme at the level of the Union, and the activities of the programme have been found sustainable.

As far as AFIS and the IMS are concerned, as they are not financial programmes, they are not subject to the corresponding evaluation cycles. There are, however, certain indicators that can be taken into account to evaluate their performance on the related operational activities<sup>10</sup>. Furthermore, AFIS is subject to regular survey reports carried out by the Commission. The latest ones indicate that more than 80% of Member State users are satisfied with the functionality and performance of the various AFIS applications, as well as for the AFIS training provided.

In its special report 19/2017 on import procedures, the European Court of Auditors (ECA) concluded that specific AFIS applications are effective tools to identify potential cases of fraud related to misdescription of origin and undervaluation/under invoicing. They can also provide useful tools to estimate the size of the customs gap<sup>11</sup>. In the same special report, the ECA also states that the Union's tools and programmes for exchanging customs information and increasing cooperation have not reached their full potential. The special report also concluded that some AFIS customs information

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<sup>8</sup> Report from the Commission to the European Parliament and the Council on the achievement of the objectives of the Hercule II Programme, COM(2015) 221 final.

<sup>9</sup> Report from the Commission to the European Parliament and the Council, Mid-Term evaluation of the Regulation (EU) No 250/2014 of the European Parliament and of the Council of 26 February 2014 establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme) and repealing Decision No 804/2004/EC, COM(2018) 3 final.

<sup>10</sup> Notably on the basis of the Commission annual reports on AFIS activities (pursuant to Art. 51a of Reg. 515/97) as part of the Commission report on the protection of the EU's financial interests (PIF Report). IMS was evaluated in Staff Working Document "Implementation of article 325 TFEU by the Member States" and the "Follow-up of recommendations to the Commission PIF Report" which accompany this report. For the 2016 report see COM (2017) 383 final and SWD(2017) 266, 267 and 270 final.

<sup>11</sup> European Court of Auditors, Special Report No 19/2017: "Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU", 5 December 2017.

systems are insufficiently used. The ECA special reports 10/2015 and 24/2016 made recommendations with regard to IMS.

More details on retrospective evaluations of current programmes can be found in section 1.2 of the ex-ante evaluation accompanying the legislative proposal.

- **Stakeholder consultations**

On 13 March 2018, the Commission organised a one-day workshop with stakeholders in the Member States (mostly representatives of the anti-fraud coordination services and customs administrations), aimed at discussing options for the activities of the future programme. The consultation confirmed the need for continued support in the form of a Union anti-fraud programme. Annex 2 of the ex-ante evaluation summarises the findings of this targeted stakeholder consultation.

The Commission also conducted an open public consultation for the preparation of the future sectorial legislations that will accompany the proposal for the MFF post 2020. Only a very limited number of contributions received concerned aspects related to the EU Anti-Fraud Programme.

- **External expertise**

An external contractor was used to evaluate the performance of Hercule III, as required by Regulation 250/2014. The independent study<sup>12</sup> carried by the contractor provided a thorough mid-term evaluation of Hercule III and outlined some ideas of possible objectives and activities for the programme going forward, in particular in the areas of cross-border cooperation between Member States, cooperation with non-Union partners, as well as addressing the challenges of new technological developments. It also found that only few actions involved staff exchanges between national administrations and few actions involved international participation.

- **Impact assessment**

Considering that the EU Anti-Fraud Programme is a continuation, with some adjustments, of existing initiatives (Hercule, AFIS and IMS) and considering its structure and the limited size of its budget, it was deemed that an Impact Assessment was not required. Instead, an ex-ante evaluation in line with Article 30(4) of the 2016 Financial Regulation in the form of a Staff Working Document is provided.

- **Simplification**

The Hercule III programme, the AFIS operational activity and the IMS reporting system each bring a valuable contribution to the protection of the Union's financial interests and mutual administrative assistance in the customs field. The EU Anti-Fraud Programme will bring the financing of these three instruments under a single programme having the advantage that, on the one hand, each of them will continue to provide the specialised service for which it has been created, while on the other hand, the conditions for streamlining and creating synergies will be put in place, as well as those for alleviating administrative burden and simplifying management.

#### **4. BUDGETARY IMPLICATIONS**

The financial envelope for the implementation of the EU Anti-Fraud Programme amounts to EUR 181 207 000 in current prices, over the period 2021-2027.

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<sup>12</sup> Mid-term Evaluation of the Hercule III programme, Final Report, CEPS, Economisti Associati, CASE, wedoIT, 2017 ([https://ec.europa.eu/anti-fraud/sites/antifraud/files/herculeiii\\_midterm\\_evaluation\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/antifraud/files/herculeiii_midterm_evaluation_en.pdf)).

The detailed allocation per year, including the payment appropriations and the human and administrative resources required, are presented in the Legislative Financial Statement which accompanies this proposal.

## **5. OTHER ELEMENTS**

### **• Implementation plans and monitoring, evaluation and reporting arrangements**

The draft regulation establishing the EU Anti-Fraud Programme provides for the following three main indicators relating to the specific objectives of the programme:

- (1) Support in preventing and combatting fraud, corruption and any other illegal activities affecting the financial interests of the Union, as measured by:
  - Satisfaction rate of activities organised and (co-)financed through the programme.
  - Percentage of Member States receiving support each year of the programme.
- (2) User satisfaction rate for the use of the Irregularities Management System.
- (3) The number of mutual assistance information made available and the number of supported mutual assistance-related activities.

In line with paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016<sup>13</sup>, where the three institutions confirmed that evaluations of existing legislation and policy should provide the basis for impact assessments of options for further action, the Commission will carry-out an interim and a final evaluation. The evaluations will assess the Programme's impact based on the Programme indicators and targets and a detailed analysis of the degree to which the Programme can be deemed relevant, effective, efficient, provides enough EU added value and is coherent with other EU policies. The evaluations will include lessons learnt to identify any issues or any potential to further improve the actions or their results. The conclusions of the evaluations accompanied by observations will be communicated to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Court of Auditors.

### **• Detailed explanation of the specific provisions of the proposal**

Chapter I of the Regulation lays out basic parameters for the EU Anti-Fraud Programme for the period 2021-2027 of the next MFF, including the scope of the programme and its financial envelope, broken down according to its three components (Hercule, AFIS and IMS). Chapter I also provides for the conditions of participation of third countries to the programme. As to the implementation of the programme, Chapter I refers largely to the Financial Regulation. For the costs covered by AFIS the Regulation provides in Annex I to the Regulation an indicative list of costs covered by the programme.

Chapter II provides for details on the implementation of the programme through grants, and in particular regarding the possible beneficiaries of grants. They include authorities which may contribute to achieving one of the objectives of the programme, from any of the following countries: a Member State or an overseas country or territory linked to it, a third country associated to the Programme, or a third country listed in a work programme.

Chapter III lays out provisions on the programming, monitoring and evaluation aspects of the programme. Specifically, it outlines the indicators and reporting methods implemented, and sets forth the interim evaluation procedure. It also establishes the Commission's power to adopt delegated acts for narrowly defined purposes.

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<sup>13</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1).

Chapter IV describes the transitional and final provisions, and provides for the repeal of the Hercule III regulation as well as the financing provisions of AFIS in Regulation 515/97.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing the EU Anti-Fraud Programme**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 33 and 325 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Auditors (<sup>14</sup>),

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Article 325 of the Treaty on the Functioning of the European Union requires the Union and the Member States to counter fraud, corruption and any other illegal activities affecting the financial interests of the Union. The Union should support activities in these fields.
- (2) Past support for such activities through Decision No 804/2004/EC of the European Parliament and of the Council<sup>15</sup> (Hercule programme), amended and extended by Decision No 878/2007/EC of the European Parliament and of the Council<sup>16</sup> (Hercule II programme), repealed and replaced by Regulation No 250/2014 of the European Parliament and of the Council<sup>17</sup> (Hercule III programme), has made it possible to enhance the activities undertaken by the Union and the Member States in terms of countering fraud, corruption and any other illegal activities affecting the financial interests of the Union.
- (3) Supporting the reporting, by the Member States and candidate and potential candidate countries, of irregularities and fraud affecting the financial interests of the Union through the Irregularity Management System (IMS) is a requirement of sectorial legislation for the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development<sup>18</sup>, the European Regional Development Fund, the European Social Fund, the

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<sup>14</sup> [ref]

<sup>15</sup> Decision No 804/2004/EC of the European Parliament and of the Council of 21 April 2004 establishing a Community action programme to promote activities in the field of the protection of the Community's financial interests (Hercule programme) (OJ L 143, 30.4.2004, p. 9).

<sup>16</sup> Decision No 878/2007/EC of the European Parliament and of the Council of 23 July 2007 amending and extending Decision No 804/2004/EC establishing a Community action programme to promote activities in the field of the protection of the Community's financial interests (Hercule II programme) (OJ L 193, 25.7.2007, p. 18).

<sup>17</sup> Regulation (EU) No 250/2014 of the European Parliament and of the Council of 26 February 2014 establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme) and repealing Decision No 804/2004/EC (OJ L 84, 20.3.2014, p. 6).

<sup>18</sup> Commission Delegated Regulation (EU) 2015/1971 of 8 July 2015 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural

Cohesion Fund, and the European Maritime and Fisheries Fund<sup>19</sup>, Asylum, Migration and Integration Fund and the instrument for financial support for police cooperation, preventing and combating crime, and crisis management<sup>20</sup>, the Fund for European Aid to the Most Deprived<sup>21</sup> as well as the pre-accession assistance<sup>22</sup> regarding the programming period 2014-2020 and onwards. IMS is a secure electronic communications tool which facilitates the Member States', as well as candidate and potential candidate countries' obligation to report detected irregularities and which supports the management and analysis of irregularities.

- (4) Council Regulation (EC) No 515/97<sup>23</sup> and Council Decision 2009/917/JHA<sup>24</sup> provide that the Union is to support mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission, to ensure the correct application of the law on customs and agricultural matters.
- (5) That support is provided to a number of operational activities. This includes the Anti-Fraud Information System (AFIS), an information technology platform which consists of a set of applications operated under a common information system managed by the Commission. IMS is also operated under the AFIS platform. Such a system requires stable and predictable financing over the years to ensure its sustainability.
- (6) Union support in the fields of the protection of the financial interests of the Union, of irregularity reporting, and of mutual administrative assistance and cooperation in customs and

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Development and repealing Commission Regulation (EC) No 1848/2006 and Commission Implementing Regulation (EU) 2015/1975 of 8 July 2015 setting out the frequency and the format of the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development, under Regulation (EU) No 1306/2013 of the European Parliament and of the Council (OJ L 293, 10.11.2015, p. 6).

<sup>19</sup> Commission Delegated Regulation (EU) 2015/1970 of 8 July 2015 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund and Commission Implementing Regulation (EU) 2015/1974 of 8 July 2015 setting out the frequency and the format of the reporting of irregularities concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund, under Regulation (EU) No 1303/2013 of the European Parliament and of the Council (OJ L 293, 10.11.2015, p. 1).

<sup>20</sup> Commission Delegated Regulation (EU) 2015/1973 supplementing Regulation (EU) No 514/2014 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the Asylum, Migration and Integration Fund and the instrument for financial support for police cooperation, preventing and combating crime, and crisis management; and Commission Implementing Regulation (EU) 2015/1977 setting out the frequency and the format of the reporting of irregularities concerning the Asylum, Migration and Integration Fund and the instrument for financial support for police cooperation, preventing and combating crime, and crisis management, under Regulation (EU) No 514/2014 of the European Parliament and of the Council (OJ L 293, 10.11.2015, p. 15).

<sup>21</sup> Commission Delegated Regulation (EU) 2015/1972 of 8 July 2015 supplementing Regulation (EU) No 223/2014 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the Fund for European Aid to the Most Deprived and Commission Implementing Regulation (EU) 2015/1976 of 8 July 2015 setting out the frequency and the format of the reporting of irregularities concerning the Fund for European Aid to the Most Deprived, under Regulation (EU) No 223/2014 of the European Parliament and of the Council (OJ L 293, 10.11.2015, p. 11).

<sup>22</sup> Article 16 of Commission Implementing Regulation (EU) No 447/2014 on the specific rules for implementing Regulation (EU) No 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession assistance (IPA II) (OJ L 132, 3.5.2014, p. 32).

<sup>23</sup> Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, as lastly amended by Regulation 2015/1525 (OJ L 82, 22.3.1997, p. 1).

<sup>24</sup> Council Decision 2009/917/JHA on the use of information technology for customs purposes (OJ L 323/20, 10.12.2009, p. 20).

agricultural matters should be streamlined under a single programme, the EU Anti-Fraud Programme (the 'Programme'), with a view to increasing synergies and budgetary flexibility, and to simplifying management.

- (7) The Programme therefore combines a component along the lines of the Hercule programme, another component ensuring the financing of IMS, and a third one that finances the activities tasked to the Commission under Regulation (EC) No 515/97, including the AFIS platform.
- (8) The AFIS platform includes several information systems, including the Customs Information System (CIS). The CIS is an automated information system which aims at assisting Member States in preventing, investigating and prosecuting operations which are in breach of customs or agricultural legislation, by increasing, through more rapid dissemination of information, the effectiveness of the cooperation and control procedures of their customs administrations. The CIS covers both administrative and police cooperation cases under a single infrastructure. For administrative cooperation purposes, the CIS is established by Regulation (EC) No 515/97, adopted on the basis of Articles 33 and 325 of the Treaty on the Functioning of the European Union. For police cooperation purposes, the CIS is established by Decision 2009/917/JHA, adopted on the basis of Articles 30(1)(a) and 34(2)(c) of the Treaty on the European Union. The police cooperation dimension of the CIS can technically not be dissociated from the administrative one as both aspects are operated under one single information technology system. Considering that the CIS itself is only one of several information systems run under AFIS and that the number of police cooperation cases is lower than the number of administrative cooperation cases in the CIS, the police cooperation dimension of AFIS is deemed accessory to its administrative one.
- (9) This Regulation lays down a financial envelope for the entire duration of the Programme, which is to constitute the prime reference amount, within the meaning of [*reference to be updated as appropriate according to the new inter-institutional agreement*: point 17 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management<sup>25</sup>], for the European Parliament and the Council during the annual budgetary procedure.
- (10) Horizontal financial rules adopted by the European Parliament and the Council on the basis of Article 322 of the Treaty on the Functioning of the European Union apply to this Regulation. These rules are laid down in the Financial Regulation and determine in particular the procedure for establishing and implementing the budget through grants, procurement, prizes, indirect implementation, and provide for checks on the responsibility of financial actors. Rules adopted on the basis of Article 322 of the Treaty on the Functioning of the European Union also concern the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, as the respect for the rule of law is an essential precondition for sound financial management and effective EU funding.
- (11) The types of financing and the methods of implementation under this Regulation should be chosen on the basis of their ability to achieve the specific objectives of the actions and to deliver results, taking into account, in particular, the costs of controls, the administrative burden, and the expected risk of non-compliance. This should include consideration of the use of lump sums, flat rates and unit costs, as well as financing not linked to costs as referred to in Article 125(1) of the Financial Regulation.

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<sup>25</sup> *Reference to be updated*: OJ C 373, 20.12.2013, p. 1. The agreement is available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2013.373.01.0001.01.ENG&toc=OJ:C:2013:373:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2013.373.01.0001.01.ENG&toc=OJ:C:2013:373:TOC).

- (12) In order to ensure continuity, under the Programme, in the financing of all the activities tasked to the Commission under Regulation (EC) No 515/97, including the AFIS platform, Annex I provides an indicative list of the activities to be financed.
- (13) The purchase of equipment through the Union instrument for financial support for customs control equipment<sup>26</sup> may have a positive impact on the fight against fraud affecting the financial interests of the EU. There is a joint responsibility on the Union instrument for financial support for customs control equipment and the Programme to avoid any duplication in the Union support. The Programme should essentially target its support to the acquisition of types of equipment which do not fall under the scope of the Union instrument for financial support for customs control equipment, or equipment for which the beneficiaries are authorities other than the authorities targeted by the Union instrument for financial support for customs control equipment. Avoiding overlaps should be notably ensured in the context of the preparation of the annual work programmes.
- (14) The Programme should be open to participation by countries of the European Free Trade Association (EFTA) which are members in the European Economic Area (EEA). It should also be open to participation by acceding countries, candidate countries and potential candidates, as well as countries covered by the European Neighbourhood Policy, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective framework agreements and Association Council decisions, or similar agreements. The Programme should also be open to other third countries provided that they enter into a specific agreement covering their participation to Union programmes.
- (15) Taking into account past evaluations of the Hercule programmes and in order to strengthen the Programme, the participation of legal entities established in a third country which is not associated to the Programme should be exceptionally possible without a need for those entities to bear the cost of their participation.
- (16) The Programme should be implemented taking into account the recommendations and measures listed in the Commission communication of 6 June 2013 entitled ‘Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products — A comprehensive EU Strategy’<sup>27</sup>, as well as the progress report on the implementation of this communication of 12 May 2017<sup>28</sup>.
- (17) The Union ratified the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation Framework Convention on Tobacco Control (the Protocol) in 2016. The Protocol should serve to protect the Union's financial interests insofar as it concerns the fight against cross-border illicit tobacco trade, which causes revenue losses. The Programme should support the Secretariat of the World Health Organisation Framework Convention on Tobacco Control in its functions related to the Protocol. It should also support other activities organised by the Secretariat in connection with the fight against illicit tobacco trade.
- (18) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>29</sup>, Council Regulation (Euratom, EC) No 2988/95<sup>30</sup>,

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<sup>26</sup> [ref]

<sup>27</sup> COM(2013) 324 final

<sup>28</sup> COM(2017) 235 final

<sup>29</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, (OJ L 248, 18.9.2013, p. 1)

Council Regulation (Euratom, EC) No 2185/96<sup>31</sup> and Council Regulation (EU) 2017/1939<sup>32</sup>, the financial interests of the Union are to be protected through proportionate measures, including the prevention, detection, correction and investigation of irregularities, including fraud, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, the imposition of administrative sanctions. In particular, in accordance with Regulation (EU, Euratom) No 883/2013 and Regulation (Euratom, EC) No 2185/96 the European Anti-Fraud Office (OLAF) may carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office (EPPO) may investigate and prosecute fraud and other criminal offences affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council<sup>33</sup>. In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the Union's financial interests, to grant the necessary rights and access to the Commission, OLAF, the EPPO and the European Court of Auditors and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

- (19) Third countries which are members of the EEA may participate in Union programmes in the framework of the cooperation established under the EEA agreement, which provides for the implementation of the programmes by a decision under that agreement. Third countries may also participate on the basis of other legal instruments. A specific provision should be introduced in this Regulation to grant the necessary rights for and access to the authorizing officer responsible, OLAF as well as the European Court of Auditors to comprehensively exert their respective competences.
- (20)
- (21) Pursuant to [*reference to be updated as appropriate according to a new decision on OCTs: Article 94 of Council Decision 2013/755/EU*<sup>34</sup>], persons and entities established in overseas countries and territories are eligible for funding subject to the rules and objectives of the Programme and possible arrangements applicable to the Member State to which the relevant overseas country or territory is linked.
- (22) Pursuant to paragraph 22 and 23 of the Inter-institutional agreement for Better Law-Making of 13 April 2016<sup>35</sup>, there is a need to evaluate this Programme on the basis of information collected through specific monitoring requirements, while avoiding overregulation and administrative burdens, in particular on Member States. These requirements, where appropriate, can include measurable indicators, as a basis for evaluating the effects of the Programme on the ground.

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<sup>30</sup> OJ L 312, 23.12.1995, p. 1.

<sup>31</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

<sup>32</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

<sup>33</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

<sup>34</sup> Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (Overseas Association Decision) (OJ L 344, 19.12.2013, p. 1).

<sup>35</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1).

- (23) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to develop the provisions for a monitoring and evaluations framework of the Programme. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (24) Article 42a(1) and (2) of Regulation (EC) No 515/97 provide for the legal basis for financing AFIS. This Regulation should replace that legal basis and provide for a new one. Article 42a(1) and (2) of Regulation (EC) No 515/97 should therefore be deleted.
- (25) Regulation (EU) No 250/2014 establishing the Hercule III programme covered the period from 1 January 2014 to 31 December 2020. This Regulation provides for a follow-up to the Hercule III programme, starting from 1 January 2021. Regulation (EU) No 250/2014 should therefore be repealed,

HAVE ADOPTED THIS REGULATION:

## **CHAPTER I**

### **GENERAL PROVISIONS**

#### *Article 1*

##### *Subject matter*

This Regulation establishes the EU Anti-Fraud Programme (the 'Programme').

It lays down the objectives of the Programme, the budget for the period 2021-2027, the forms of Union funding and the rules for providing such funding.

#### *Article 2*

##### *Programme objectives*

1. The Programme has the following general objectives:
  - (a) the protection of the financial interests of the Union.
  - (b) support to mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.
2. The Programme has the following specific objectives:
  - (a) preventing and combatting fraud, corruption and any other illegal activities affecting the financial interests of the European Union.
  - (b) supporting the reporting of irregularities, including fraud, with regard to the shared management and pre-accession assistance funds of the Union budget.

- (c) providing tools for information exchange and support for operational activities in the field of mutual administrative assistance in customs and agricultural matters.

### *Article 3*

#### *Budget*

1. The financial envelope for the implementation of the Programme for the period 2021 – 2027 shall be EUR 181.207 million in current prices.
2. The indicative distribution of the amount referred to in paragraph 1 shall be:
  - (a) EUR 114.207 million for the objective referred to in Article 2(2)(a);
  - (b) EUR 7 million for the objective referred to in Article 2(2)(b);
  - (c) EUR 60 million for the objective referred to in Article 2(2)(c).
3. The amount referred to in paragraph 1 may be used for technical and administrative assistance for the implementation of the Programme, such as preparatory, monitoring, control, audit and evaluation activities, including corporate information technology systems.

### *Article 4*

#### *Third countries associated to the Programme*

The Programme shall be open to the following third countries:

- (a) European Free Trade Association (EFTA) members which are members of the European Economic Area (EEA), in accordance with the conditions laid down in the EEA agreement;
- (b) acceding countries, candidate countries and potential candidates, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective framework agreements and association council decisions, or similar agreements, and in accordance with the specific conditions laid down in agreements between the Union and those countries;
- (c) countries covered by the European Neighbourhood Policy, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective framework agreements and Association Council decisions, or similar agreements, and in accordance with the specific conditions laid down in agreements between the Union and those countries;
- (d) other third countries, in accordance with the conditions laid down in a specific agreement covering the participation of the third country to any Union programme, provided that the agreement
  - (a) ensures a fair balance as regards the contributions and benefits of the third country participating in the Union programmes;
  - (b) lays down the conditions of participation in the programmes, including the calculation of financial contributions to individual programmes and their administrative costs. These contributions shall constitute assigned revenues in accordance with Article [21(5)] of the Financial Regulation;
  - (c) does not confer to the third country a decisional power on the programmes;

- (d) guarantees the rights of the Union to ensure sound financial management and to protect its financial interests.

#### *Article 5*

##### *Implementation and forms of Union funding*

1. The Programme shall be implemented in direct management in accordance with the Financial Regulation or in indirect management with bodies referred to in Article 62(1)(c) of the Financial Regulation.
2. The Programme may provide funding in any of the forms laid down in the Financial Regulation, in particular grants and procurement, as well as the reimbursement of travel and subsistence expenses as provided for by Article 238 of the Financial Regulation.
3. The Programme may provide funding for actions carried out in accordance with Regulation (EC) No 515/97, in particular to cover the types of costs referred to in the indicative list in Annex I.
4. When the action supported involves the acquisition of equipment, the Commission shall, where appropriate, set up a coordination mechanism ensuring efficiency and interoperability between all the equipment purchased with the support of Union Programmes.

#### *Article 6*

##### *Protection of the financial interests of the Union*

Where a third country participates in the Programme by a decision under an international agreement or by virtue of any other legal instrument, the third country shall grant the necessary rights and access required for the authorising officer responsible, the European Anti-Fraud Office, and the European Court of Auditors to comprehensively exert their respective competences. In the case of the European Anti-Fraud Office, such rights shall include the right to carry out investigations, including on-the-spot checks and inspections, provided for in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office.

## **CHAPTER II**

### **GRANTS**

#### *Article 7*

Grants under the Programme shall be awarded and managed in accordance with Title VIII of the Financial Regulation.

## *Article 8*

### *Eligible actions*

Only actions implementing the objectives referred to in Article 2 shall be eligible for funding.

## *Article 9*

### *Eligible entities*

1. The eligibility criteria set out in paragraph 2 shall apply in addition to the criteria set out in Article 197 of the Financial Regulation.
2. The following entities are eligible:
  - (a) public authorities which may contribute to achieving one of the objectives referred to in Article 2 and are established in any of the following countries:
    - (a) a Member State or an overseas country or territory linked to it;
    - (b) a third country associated to the Programme;
    - (c) a third country listed in the work programme under the conditions specified in paragraph 3.
  - (b) research and educational institutes and non-profit-making entities which may contribute to the achievement of the objectives referred to in Article 2, provided that they have been established and have been operating for at least one year in a Member State, or a third country associated to the Programme, or a third country listed in a work programme under the conditions specified in paragraph 3.
  - (c) any legal entity created under Union law or any international organisation.
3. Entities referred to in paragraph 2 established in a third country which is not associated to the Programme are exceptionally eligible to participate where this is necessary for the achievement of the objectives of a given action.
4. Entities referred to in paragraph 2 established in a third country which is not associated to the programme should in principle bear the cost of their participation.

## **CHAPTER III**

### **PROGRAMMING, MONITORING, AND EVALUATION**

## *Article 10*

### *Work programme*

The Programme shall be implemented by work programmes referred to in Article 110 of the Financial Regulation.

## *Article 11*

### *Monitoring and reporting*

1. Indicators to report on progress of the Programme towards the achievement of the general and specific objectives set out in Article 2 are set in Annex II.
2. To ensure effective assessment of progress of the Programme towards the achievement of its objectives, the Commission is empowered to adopt delegated acts, in accordance with Article 14, to amend Annex II to review or complement the indicators where considered necessary and to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework.
3. The performance reporting system shall ensure that data for monitoring programme implementation and results are collected efficiently, effectively, and in a timely manner. To that end, proportionate reporting requirements shall be imposed on recipients of Union funds and, where relevant, on the Member States.

## *Article 12*

### *Evaluation*

1. Evaluations shall be carried out in a timely manner to feed into the decision-making process.
2. The interim evaluation of the Programme shall be performed once there is sufficient information available about the implementation of the Programme, but no later than four years after the start of the programme implementation.
3. At the end of the implementation of the Programme, but no later than four years after the end of the period specified in Article 1, a final evaluation of the Programme shall be carried out by the Commission.
4. The Commission shall communicate the conclusions of the evaluations accompanied by its observations, to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions, and the European Court of Auditors.

## *Article 13*

### *Delegation of power*

The Commission is empowered to adopt delegated acts in accordance with article 14 to develop the provisions for a monitoring and evaluations framework as provided for in Article 11.

## *Article 14*

### *Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 13 shall be conferred on the Commission until 31 December 2028.

3. The delegation of power referred to in Article 13 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal* of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

## **CHAPTER IV**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### *Article 15*

##### *Information, communication and publicity*

1. The recipients of Union funding shall acknowledge the origin and ensure the visibility of the Union funding (in particular when promoting the actions and their results) by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public. Acknowledging the origin, and ensuring visibility, of the Union funding shall not be required where there is a risk of compromising the effective performance of anti-fraud and customs operational activities.
2. The Commission shall implement information and communication actions relating to the Programme, and its actions and results. Financial resources allocated to the Programme shall also contribute to the corporate communication of the political priorities of the Union, as far as they are related to the objectives referred to in Article 2.

#### *Article 16*

##### *Amendment of Regulation (EC) No 515/97*

In Article 42a of Regulation (EC) No 515/97, paragraphs 1 and 2 are deleted.

#### *Article 17*

##### *Repeal*

3. Regulation 250/2014 is repealed with effect from 1 January 2021.

## *Article 18*

### *Transitional provisions*

1. This Regulation shall not affect the continuation or modification of the actions concerned, until their closure, under Regulation 250/2014 and under article 42a of Regulation (EC) No 515/97, which shall continue to apply to the actions concerned until their closure.
2. The financial envelope for the Programme may also cover technical and administrative assistance expenses necessary to ensure the transition between the Programme and the measures adopted under Regulation 250/2014 and under article 42a of Regulation (EC) No 515/97.

## *Article 19*

### *Entry into force*

This Regulation shall enter into force on the [twentieth] day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## LEGISLATIVE FINANCIAL STATEMENT

### **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned (*programme cluster*)
- 1.3. Nature of the proposal/initiative
- 1.4. Grounds for the proposal/initiative
- 1.5. Duration and financial impact
- 1.6. Management mode(s) planned

### **2. MANAGEMENT MEASURES**

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

### **3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
  - 3.2.1. *Summary of estimated impact on expenditure*
  - 3.2.2. *Estimated impact on appropriations of an administrative nature*
  - 3.2.3. *Third-party contributions*
- 3.3. Estimated impact on revenue

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

The EU Anti-Fraud Programme

#### 1.2. Policy area(s) concerned (*Programme cluster*)

03 Single Market  
03 03 EU Anti-Fraud Programme

#### 1.3. The proposal/initiative relates to:

- a new action
- a new action following a pilot project/preparatory action<sup>36</sup>
- the extension of an existing action
- a merger or redirection of one or more actions towards another/a new action

#### 1.4. Grounds for the proposal/initiative

##### 1.4.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

Article 325 TFEU requires the Union and the Member States to counter fraud and any other illegal activities affecting the financial interests of the European Union. Article 33 TFEU provides for strengthening of customs cooperation between Member States and between the latter and the Commission, which is further detailed in Regulation 515/97 on mutual administrative assistance and implemented inter alia via the AFIS platform. The reporting obligations to the IMS are provided for in the relevant sectorial legislation. Within this framework, the EU Anti-Fraud Programme will provide the beneficiaries with support to enable them to better protect the financial interests of the EU and to mutual administrative assistance in customs matters.

The programme will be implemented via annual work programmes over the duration 2021-2027.

##### 1.4.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at European level (ex-ante)

Fraud affecting the EU's financial interests is a cross-border phenomenon, affecting all EU Member States, as shown by statistics published in the annual Reports on the fight against fraud ('the PIF Reports'). There is a need for coordinated action to tackle fraud and also to facilitate mutual administrative assistance in customs matters. Hercule, AFIS and the IMS have all been long-standing tools supporting the Member

<sup>36</sup> As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

States and the Union in this respect. This proposal aims at streamlining the financial support for these tools, for the duration of the next multi-annual financial framework.

Expected generated Union added value (ex-post)

The programme is expected to continue supporting the Member States and the Union in fighting fraud affecting the EU's financial interests, by financing activities (technical assistance and training) which otherwise might not be available at national level, in all Member States. It will also provide services (AFIS and IMS) which, to meet their objectives, should be delivered in a centralised and horizontal manner, for all Member States. The programme will also allow for savings, as it has been the case with the centralised purchase of access to various relevant data bases.

#### 1.4.3. *Lessons learned from similar experiences in the past*

Hercule, AFIS, and the IMS are long-standing EU tools for combatting fraud and irregularities to the detriment of the EU budget and for supporting mutual administrative assistance between customs administrations and cooperation with the Commission. They have been subject to regular evaluations and user satisfaction surveys, which have largely demonstrated the added-value of each of them.

In the case of Hercule, the most recent such exercise was the mid-term evaluation of Hercule III, which also included an independent evaluation, which was published in January 2018. The evaluation concluded that the programme proved relevant, that mechanisms were in place to ensure its coherence, and that it had been effective and efficient. It also found that there was a clear added-value to have such a programme at the level of the EU, and the activities of the programme had been largely sustainable.

As an operational activity, AFIS has been subject to user satisfaction surveys, internal audit activities, as well as participants' evaluation, in the case of JCOs. AFIS was positively appreciated, with the latest data available showing a satisfaction rate among users for functionality, performance and training activities of more than 80%. Moreover, the European Court of Auditors concluded that the information on Container Status Messages and fair prices provided by the AFIS applications CSM directory and Automated Monitoring Tool are effective tools to identify potential cases of fraud related to misdescription of origin and undervaluation/underinvoicing.

The IMS is analysed in close collaboration with the Member States, in the Framework of the "Reporting and Analysis" component of the COCOLAF expert group.

#### 1.4.4. *Compatibility and possible synergy with other appropriate instruments*

Hercule has been the only EU programme solely dedicated to supporting the fight against fraud affecting the financial interests of the EU. AFIS and the IMS are operational activities providing specialised services to the Member States. The Hercule evaluations have demonstrated that the support provided by Hercule is unique in scope and contents.

Under the future multi-annual programming period, a new Union instrument for financial support for customs control equipment will be established to tackle the relevant challenges in the field of customs controls by supporting the purchases of control equipment for the benefit of customs authorities. The new instrument will be complementary to the EU Anti-Fraud Programme, which support or the acquisition

of equipment will be limited in volume, targeted towards the protection of the EU's financial interests, and for the benefit of customs and non-customs authorities.

## 1.5. Duration and financial impact

### limited duration

- in effect from 01/01/2021 to 31/12/2027
- Financial impact from 2021 to 2027
- Financial impact from 2021 to 2030 only for payment appropriations
- unlimited duration
- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

## 1.6. Management mode(s) planned<sup>37</sup>

### Direct management by the Commission

- by its departments, including by its staff in the Union delegations;
- by the executive agencies

### Shared management with the Member States

### Indirect management by entrusting budget implementation tasks to:

- third countries or the bodies they have designated;
- international organisations and their agencies: The Framework Convention for Tobacco Control (FCTC) secretariat;
- the EIB and the European Investment Fund;
- bodies referred to in Articles 70 and 71 of the Financial Regulation;
- public law bodies;
- bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

### Comments

The Programme will be implemented via direct management. However, the possibility exists that a specific action will be implemented under indirect management in connection with the funding of the FCTC secretariat.

<sup>37</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:  
<https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>

## 2. MANAGEMENT MEASURES

### 2.1. Monitoring and reporting rules

*Specify frequency and conditions.*

The indicators to monitor the implementation and progress of the programme are presented in Annex II to the draft Regulation. Proportionate reporting requirements will be imposed on the recipients of financial support, in the context of the annual work programmes.

### 2.2. Management and control system(s)

#### 2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

The programme will be implemented by OLAF under direct management mode. However, the possibility exists that a specific action will be implemented under indirect management in connection with the funding of the FCTC secretariat.

The EU Anti-Fraud Programme will largely roll over the existing Hercule Programme, combined with AFIS and IMS. The funding implementation mechanisms, payment modalities and control measures have proved efficient and proportionate. They will therefore be continued under the EU Anti-Fraud Programme, while taking advantage of the flexibility introduced by the Financial Regulation, to be adopted in 2018 (e.g. the use of lump sums, flat rates and unit costs).

The financial circuit which will be applied is a partially decentralised model with counterweight from OLAF's Budget unit for all transactions except for the pre-financing payments where the modalities of a centralised management mode will be followed.

In OLAF, every Head of Unit and Director have been granted a sub-delegation from the Director-General (Authorising Officer by Delegation) hence under the terms of the Internal Rules on the implementation of the budget, the designated authorising officer by sub-delegation (AOSD) takes full responsibility for the operation (i.e. financial and operational) of the programme and - after having verified that the necessary tasks and checks have been carried out by the initiation and verification function – the AOSD must decide whether to authorise or refuse the operation.

#### Particularities of the grant files:

- The grants will be managed electronically from the launch of the call for proposals till the final payment by means of the Commission's eGrants management system.

- The grants will take the form of one of the simplified forms provided by the Financial Regulation, to be adopted in 2018:

- lump sums;
- flat rate;
- unit costs.

Simplified forms of grants enable OLAF's authorising officers responsible to focus on the proper implementation of the action rather than on the actual costs.

- The standard grant agreements defines the conditions applying to the financing and activities resorting under the grant, including a chapter on control methods.
- Depending on various variables (the amount of the contract, the complexity of the file), ex-post on the spot controls will be carried out by the financial and operational file operators. During those controls the quality as well as the financial impact of the output will be evaluated.
- Payment modalities will be applied in an uniform way, on the basis of pre-financing. The payment of the balance amount will be executed within the 60 days from the day of submission of the final report.

Particularities for OLAF's Procurement files:

- Detailed terms of reference will be drafted and form the basis of the specific contract. Anti-fraud measures are foreseen in all contracts concluded between OLAF and the external party.
- OLAF will perform controls of all deliverables and will supervise all operations and services carried out by the framework contractor.
- Most of the tasks during the procurement process will be performed electronically via the different e-Procurement applications such are eTendering, eSubmission, eInvoice etc.

Summary:

Past experience with the programmes Hercule I, II, III, as well as with AFIS shows that the payment modalities and control methods have worked very well and compliance with the Financial Regulation has been ensured.

2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

OLAF has set up internal control processes aimed to ensure the adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments concerned.

The control objective is to ensure that the estimated error rate does not exceed 2% annually.

The level of risk is considered low for the grant agreements, since for approximately 90% of the actions the beneficiaries are public administrations or law enforcement services in the Member States.

The level of risk for contracts awarded after a procurement process is to be considered as low since an important part of the expenditure is legally and financially covered by a framework contract concluded for 1 year with the possibility to extend 3 times. This approach, which includes conferences, studies, possibly the digital forensics training, the framework contracts used in the context of AFIS, and meetings and trainings under Regulation 515/97, will continue to be taken in the future.

In line with the Commission requirements, a risk assessment exercise will be performed each year.

Internal Control Systems:

The operational units are responsible for the operational verifications. In OLAF, all files are verified by at least three persons (two financial and one operational agent) before they are accepted and processed by the Authorising Officer by Sub-Delegation (AOSD).

OLAF staff members designated by the authorising officer to verify financial operations are chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience, or after having followed an appropriate training programme. They follow continuing professional training and development to maintain the required level of competence over time.

Ex-ante controls are carried out by the Financial Verifying Agents of the OLAF's Budget Unit on every transaction (grants and procurement files) which requires an approval of the AOSD. During these ex-ante controls the legality and regularity of transactions are checked on the basis of checklists. When errors and/or weaknesses are noted, the checklists are updated in order to cover the risk identified.

The accounts are checked on a monthly basis by the Accounting Correspondent supervised by the AOSD of the Budget Unit.

Moreover, OLAF annually assesses the effectiveness of its key internal control systems, including the processes carried out by implementing bodies in accordance with the applicable Commission guidance. The assessment relies on a number of monitoring measures and sources of information including a management risk assessment, monitoring of reported instances of exceptions, non-compliance events and internal control weaknesses related to audit findings.

2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

OLAF has assessed these costs of controls as adequate taking into account the atypical position of OLAF as the Office in charge of the fight against fraud which pleads for a strong control environment. The control objective is to ensure that the estimated error rate does not exceed 2% annually.

Based on an assessment of the most relevant key indicators on procurement and the control results, OLAF has assessed the cost-effectiveness and the efficiency of the control system and reached a positive conclusion.

The depth of the assessment reaches generally Level 3 and in some cases Level 4 where an on the spot check has been performed.

For Grants

The total cost of controls related to grants (i.e. including costs related to financial ex-ante and to ex-post controls) has been estimated in the 2017 Annual Activity Report at 7.1% of the total amount of transactions concerned. Following the introduction of simplified forms in the 2019 calls for proposals, it is expected that the cost of controls can be further reduced to a 6.3% of the transactions concerned.

These controls did not identify any financial error that could have had a negative impact on the assurance. This means that management has sufficient assurance on the achievement of the financial management and internal control objectives.

For Procurement

The cost of the controls on procurement procedures was assessed in the Annual Activity report at 1.59% of the budget allocated to procurement.

The costs of controls related to the possible financing of the FCTC secretariat can be estimated at 1.4%.

The ex-post controls did not identify any significant financial error that could have had a negative impact on the assurance.

### 2.3. Measures to prevent fraud and irregularities

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

The financial interests of the Union will be protected in accordance with the relevant provisions in the Financial Regulation, as mentioned in Recital 17 and Article 6 of this proposal.

Overall, the mitigation actions already in place offer a reasonable assurance that the risks of fraud are well managed and the likelihood kept to a low level. Taking into account the fraud risk assessment, the control environment, the procedures in place and the mission of OLAF, it has been decided to focus on the following objectives:

#### 1. Maintain a high level of control for funds managed by OLAF

Although OLAF has a small operational budget and limited financial transactions, its mission in the fight against fraud requires that it lead by example. Therefore, OLAF limits the risk of fraud by having a strong control environment in place towards funds it manages.

#### 2. Promote the highest level of integrity of OLAF staff

The existence of a corporate culture which favours integrity of staff is of the highest importance in fighting fraud. With this aim it is important to have rules in place that are acknowledged and clear to everyone.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading of the multiannual financial framework and new expenditure budget line(s) proposed

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading.....]	Diff./Non-diff. <sup>38</sup>	from EFTA countries <sup>39</sup>	from candidate countries <sup>40</sup>	from third countries	within the meaning of Article [21(2)(b)] of the Financial Regulation
1	03 03 EU Anti-Fraud Programme	Diff	YES	YES	YES	NO
	03 03 01 Preventing and combatting fraud, corruption and any other illegal activities affecting the financial interests of the EU	Diff	YES	YES	YES	NO
	03 03 02 Supporting the reporting of irregularities, including fraud	Diff	YES	YES	YES	NO
	03 03 03 Provide funding for actions carried out in accordance with Regulation 515/97	Diff	YES	YES	YES	NO

<sup>38</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>39</sup> EFTA: European Free Trade Association.

<sup>40</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure<sup>41</sup>

EUR million (to three decimal places)

Heading of multiannual financial framework		1	Single Market, Innovation and Digital								
			2021	2022	2023	2024	2025	2026	2027	Post 2027	TOTAL
03 03 01 Preventing and combatting fraud, corruption and any other illegal activities affecting the financial interests of the EU	Commitments	(1)	15.160	15.359	15.662	16.075	16.608	17.270	18.073		<b>114.207</b>
	Payments	(2)	9.023	12.700	14.623	15.500	15.900	16.400	17.500	12.561	<b>114.207</b>
03 03 02 Supporting the reporting of irregularities, including fraud	Commitments	(3)	0.929	0.941	0.960	0.985	1.018	1.059	1.108		<b>7.000</b>
	Payments	(4)	0.929	0.941	0.960	0.985	1.018	1.059	1.108	p.m.	<b>7.000</b>
03 03 03 Provide funding for actions carried out in accordance with Regulation 515/97	Commitments	(5)	7.964	8.069	8.228	8.445	8.725	9.073	9.495		<b>60.000</b>
	Payments	(6)	7.566	7.665	7.817	8.023	8.289	8.620	9.020	3.000	<b>60.000</b>
Appropriations of an administrative nature financed from the envelope of the programme <sup>42</sup>	Commitments = Payments	(7)	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		

<sup>41</sup> Totals may not tally due to rounding.

<b>TOTAL appropriations for the envelop of the programme</b>	Commitments	=1+ 3+5 +7	24.05 3	24.36 9	24.85 0	25.50 6	26.35 1	27.40 2	28.67 6		<b>181.207</b>
	Payments	=2+ +4+ 6	17.51 8	21.30 7	23.40 0	24.50 8	25.20 7	26.07 8	27.62 8	15.561	<b>181.207</b>

<b>Heading of multiannual financial framework</b>	7	'Administrative expenditure'
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This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the [Annex to the Legislative Financial Statement](#) (Annex V to the internal rules), which is uploaded to DECIDE for interservice consultation purposes.

<sup>42</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	<i>Post 2027</i>	TOTAL
Human resources		1.502	1.502	1.502	1.502	1.502	1.502	1.502		<b>10.514</b>
Other administrative expenditure		0.015	0.015	0.015	0.015	0.015	0.015	0.015		<b>0.105</b>
<b>TOTAL appropriations under HEADING 7 of the multiannual financial framework</b>	(Total commitments = Total payments)	<b>1.517</b>		<b>10.619</b>						

EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	<i>Post 2027</i>	TOTAL
<b>TOTAL appropriations across the multiannual financial framework</b>	Commitments	<b>25.570</b>	<b>25.886</b>	<b>26.367</b>	<b>27.023</b>	<b>27.868</b>	<b>28.919</b>	<b>30.193</b>		<b>191.826</b>
	Payments	25.012	25.180	23.927	24.518	25.280	26.228	27.377	25.012	<b>191.826</b>

### 3.2.2. Summary of estimated impact on appropriations of an administrative nature

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

Years	2021	2022	2023	2024	2025	2026	2027	TOTAL
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<b>HEADING 7 of the multiannual financial framework</b>								
Human resources	1.502	1.502	1.502	1.502	1.502	1.502	1.502	<b>10.514</b>
Other administrative expenditure	0.015	0.015	0.015	0.015	0.015	0.015	0.015	<b>0.105</b>
<b>Subtotal HEADING 7 of the multiannual financial framework</b>	<b>1.517</b>	<b>10.619</b>						

<b>Outside HEADING 7<sup>43</sup> of the multiannual financial framework</b>								
Human resources								
Other expenditure of an administrative nature								
<b>Subtotal outside HEADING 7 of the multiannual financial framework</b>								

<b>TOTAL</b>	<b>1.517</b>	<b>10.619</b>						
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>43</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

### 3.2.2.1. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

Years	2021	2022	2023	2024	2025	2026	2027
<b>• Establishment plan posts (officials and temporary staff)</b>							
Headquarters and Commission's Representation Offices	10.5	10.5	10.5	10.5	10.5	10.5	10.5
Delegations							
Research							
<b>• External staff (in Full Time Equivalent unit: FTE) - AC, AL, END, INT and JED <sup>44</sup></b>							
Heading 7							
Financed from HEADING 7 of the multiannual financial framework	- at Headquarters						
	- in Delegations						
Financed from the envelope of the programme <sup>45</sup>	- at Headquarters						
	- in Delegations						
Research							
Other (specify)							
<b>TOTAL</b>	<b>10.5</b>	<b>10.5</b>	<b>10.5</b>	<b>10.5</b>	<b>10.5</b>	<b>10.5</b>	<b>10.5</b>

Description of tasks to be carried out:

Officials and temporary staff	6 AD Officials: strategic planning, monitoring and review 4,5 AST: line managers and operational and financial verification
External staff	

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>44</sup> AC= Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

<sup>45</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

### 3.2.3. *Third-party contributions*

The proposal/initiative:

- does not provide for co-financing by third parties
- provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

Years	2021	2022	2023	2024	2025	2026	2027	TOTAL
Specify the co-financing body								
TOTAL appropriations co-financed								

### 3.3. **Estimated impact on revenue**

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
  - on own resources
  - on other revenue

please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Impact of the proposal/initiative <sup>46</sup>						
	2021	2022	2023	2024	2025	2026	2027
Article .....							

For assigned revenue, specify the budget expenditure line(s) affected.

[...]

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[...]

<sup>46</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.